IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1258 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

HASMUKHBHAI NANUBHAI PATEL

Appearance:

1. Criminal Appeal No. 1258 of 1992

Mr.K.T.Dave, learned A.P.P. for appellant No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 02/12/2002

ORAL JUDGEMENT

1. Appellant - State of Gujarat through Food Inspector, original complainant, has filed this Appeal and challenged the order of acquittal recorded by the

learned Judicial Magistrate, First Class, Bardoli acquitting the accused from the offences punishable under Sections 7(i) and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act' for short) and the Appeal filed by the appellant when placed for admission before the Court on 29.7.93, the court has, while granting leave and admitting the appeal against original accused No.1, refused leave for original accused No.2 and accordingly the Appeal of the appellant against respondent No.2 was dismissed.

2. Mr.K.T.Dave, learned A.P.P. had taken me through the order under challenge recorded by the learned Magistrate with the evidence recorded during the trial before the learned Magistrate, namely, the evidence of complainant Shri A.M.Shah, who was at the relevant time working as a Food Inspector and the documents in respect of the report of the public analysis showing the sample, which was purchased by the complainant from respondent No.1, as adulterated and the sanction to prosecute the accused as provided under Section 20 of the Act granted by the appropriate authority. He has also taken me through the complaint and the evidence of the Food inspector, who was examined during the trial to prove the case against the accused.

3. As found from the evidence of the complainant Shri A.M.Shah, whose evidence was recorded at Exh.12, he has deposed before the court that he is working as a Food Inspector and the day on which the sample was purchased he was working as a Food Inspector within the Surat Circle. As found from his deposition, that he was appointed as a Food Inspector and as provided under the Act, he has taken training for 90 days in respect of the procedure for obtaining sample and his name had also appeared in the Gazette, which shows that he was appointed as a Food Inspector. He has also produced the copy of the Gazette which is at Exh.14 and the document Exh.15 shows that he has taken training for taking sample for 90 days. It is his case that on 24.7.87 he has also visited village Buhari and he has taken one panch,namely, Kumodchandra of village Buhari and at 16.30 hours he visited the shop of respondent No.1 known as Shakti Tabka and General Stores. At that time the Proprietor of the said shop i.e. accused No.1 was present. After giving identification and as in the said shop accused was selling tea, coffee, biscuit, confectionery etc., he has purchased 3 packets containing 500 Gram each of toffee, which was purchased from the Branch of Maryada Confectionery Works, after paying a price of Rs.7-- per packet under the Prevention of Food Adulteration Act and

Rules. He has also passed a receipt about the purchase of 3 packets of toffee from the accused. The complainant had also asked the accused No.1 about the purchase of such toffee by him and accused No.1 has reported that he has purchased this toffee from the agent and the Bill for that always comes by post and he could not produce any document in respect of the warranty of such purchase of article. After purchasing the said sample, he has sent the said sample for analysis and also he has issued notice. While taking the sample, as observed earlier, he has taken the sample from accused No.1 after following the requirement of provisions of Food Adulteration Act and Rules and the panchanama was drawn in presence of panchas. He has also explained about the sample, which was sent for analysis as contemplated under the Food Adulteration Act and Rules. He has also proved the document to show that the said sample was sent for analysis and he has also produced the document to show that the said sample has reached to the Laboratory. He has also sent letter from his office to Maryada Confectionery Works alongwith Form No.6 informing the accused No.2 about taking sample by him from accused No.1. It is further found from his deposition that he has also informed accused No.1 that there cannot be any liability of warranty in respect of the bill produced by him regarding purchase of 60 sweets.

4. As found from the report of Public Analysis, that the sample, which was analysed, which was taken by the Food Inspector from accused No.1, was below standard and as per the standard prescribed the minimum fat which was required is at 4%. However, as found from the analysis, the fat was found is of 0.17% and said sample was found to be sub-standard. The complaint was filed against the accused for the offences under Sections 7(i) and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954.

5. As found from the paper book, from the cross examination of the complainant by the advocate for accused No.1, it is typed to the effect that the complainant has admitted that it is correct that the accused No.1 has not committed any office and he has initiated wrongly the case against accused No.1. The paper book is certified by a responsible person from the Court. Accordingly I have verified the original deposition of the complainant recorded by the learned Magistrate and it is shocking that the complainant in term has denied the suggestion made on behalf of accused No.1 by answering that it is not true that accused No.1 has not committed any offence and a false case has been

filed against him. While preparing such paper book concerned clerks/typists are required to be more vigilant and more particularly when such paper book is certified and compared by a person, they should be more vigilant while incorporating such deposition in the paper book. This is a serious lacuna on the part of all concerned and they should be more vigilant in future so that such mistake is not committed.

6. Panch, who was examined by the complainant, has not supported the case of the complainant and further it is found from the evidence of the complainant in cross examination that he has admitted that in a prepared panchanama he has obtained signature of panch witnesses.

7. As found, when this order of acquittal is challenged, admittedly the appeal filed by appellant was dismissed as back as on 29.7.93 against original accused No.2, who is more responsible for the offence. So far as acquittal of respondent No.1 is concerned, in view of the findings recorded by the learned trial Magistrate and in view of the fact that he has purchased the article of toffee from original accused No.2, original accused No.1 can not be held responsible for the same and at the most there is a case against original accused No.2 for the alleged breach of the Act as provided under the provisions of Prevention of Food Adulteration Act. Considering the findings recorded by the learned Magistrate and in view of the fact that this Appeal is admitted only against accused No.1 and in view of the fact that the sample of toffee was purchased by accused No.1 from accused No.2 and in view of the complaint filed by the complainant for the offences punishable under the provisions of Prevention of Food Adulteration Act, wherein the learned Magistrate has while appreciating the evidence acquitted accused from the charges, this is not a case where the findings recorded by the learned Magistrate, while acquitting the accused, deserves to be upset and more particularly in view of the fact that the evidence does not indicate that any offence is committed by the respondent No.1 - original accused No.1. Accordingly there is no substance in the present Appeal and the same is dismissed. The judgment and order recorded by the learned Judicial Magistrate,First Class, Bardoli in Criminal Case No.2395/88 on 7.7.92 acquitting the accused from the offences punishable under Sections 7(i) and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 is hereby confirmed.

(D.K.Trivedi,J)

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